



Special Meeting July 22, 2020

# Air Quality Advisory Council

- The Chair will call the Meeting to order at approximately 9:00 am.
- Please note that public comments will only be accepted at the appropriate time. Please use the “Raise hand” feature to notify the Host of your intent to provide a public comment. You may also email [AQDRuleComments@deq.ok.gov](mailto:AQDRuleComments@deq.ok.gov) in lieu of speaking on the record.
- Additional participation instructions can be found at the meeting link: <https://www.deq.ok.gov/council-meeting-single/?meetingid=MTE4MjY=>

# Public Meeting Connection Issues

- If you lose connectivity, please try to reconnect and rejoin the meeting in progress.
- You may also call from your landline or cell phone 1-415-655-0002 to join the meeting with audio only. Access Code: 1333031384
- To ensure the public is able to listen to the Council's deliberation throughout the meeting, all discussion and questions will be made audibly and the chat features in WebEx will not be used.
- This presentation as well as helpful tips are located on the webpage for this meeting: <https://www.deq.ok.gov/council-meeting-single/?meetingid=MTE4MjY=>.
- If the meeting host becomes disconnected during the meeting, DEQ will attempt for 15 minutes to re-start the meeting. This would require all participants to log back into the meeting. If successful, the meeting would be restarted once quorum was re-established. If unsuccessful, the meeting will be adjourned to a later date and details would be posted on the Council webpage.

**SPECIAL MEETING  
AIR QUALITY ADVISORY COUNCIL  
July 22, 2020, 9:00 a.m.  
Virtual Meeting  
\*REVISED AGENDA\***

**Videoconference and Teleconference Information**

Meeting link (will open at 8:45am):

<https://odot.webex.com/odot/onstage/g.php?MTID=e034365b4aaa178f48cec398666046391>

Event Number (Access Code): 1333031384

Password: g2CXj3TNw3Z

Phone: +1-415-655-0002

**For additional information visit:**

<https://www.deq.ok.gov/council-meeting-single/?meetingid=MTE4MjY=>

Or call 405-702-4177.

- 1. Call to Order** – Laura Lodes, Chair
- 2. Roll Call** – Quiana Fields

### 3. Upcoming Permitting Rule Changes

**Chapter 4. Rules of Practice and Procedure**  
**Subchapter 7. Environmental Permit Process**  
**Part 1. The Process**  
252:4-7-13. [AMENDED]  
**Part 3. Air Quality Division Tiers and Time Lines**  
252:4-7-32. [AMENDED]  
252:4-7-33. [AMENDED]

The Department is proposing to amend the air quality portions of Chapter 4, Subchapter 7 to better align the Department's issuance process and public participation procedures for construction and operating permits with the New Source Review permit requirements and Title V operating permit requirements.

and **Chapter 100. Air Pollution Control**  
**Subchapter 1. General Provisions**  
252:100-1-3. [AMENDED]  
**Subchapter 7. Permits for Minor Facilities**  
**Part 1. General Provisions**  
252:100-7-1.1. [AMENDED]  
**Part 3. Construction Permits**  
252:100-7-15. [AMENDED]  
**Part 4. Operating Permits**  
252:100-7-18. [AMENDED]  
**Subchapter 8. Permits for Part 70 Sources and Major New Source Review (NSR) Sources**  
**Part 5. Permits For Part 70 Sources**  
252:100-8-2. [AMENDED]  
252:100-8-4. [AMENDED]  
252:100-8-5. [AMENDED]  
252:100-8-7.2. [AMENDED]  
252:100-8-8. [AMENDED]

The Department is proposing to amend definitions and permitting requirements in Subchapter 1, 7, and 8 to better align the Department's permit requirements and issuance process for construction and operating permits with the New Source Review permit requirements and Title V operating permit requirements.

1. Presentations – Tom Richardson, P.E., R&P Section, AQD
2. Questions and discussion by the Council
3. Questions, comments and discussion by the public

# Overview of Proposed Changes to Air Quality Permitting Rules – Round 2

Air Quality Advisory Council Special Meeting  
July 22, 2020



Tom Richardson  
Rules & Planning Section  
Air Quality Division  
Oklahoma Department of Environmental Quality

## Introduction

Brief recap of our plans to amend our permitting rules:

- ❖ Our State Implementation Plan (SIP) backlog and why we are amending our rules.
- ❖ Issues to be addressed and draft changes to rule text.
- ❖ Final steps in the process

# SIP Backlog and EPA Collaboration



The screenshot shows the EPA website's navigation bar with links for Environmental Topics, Laws & Regulations, and About EPA. A search bar is present with the text 'Search EPA.gov'. Below the navigation bar, the main heading reads 'Approved Air Quality Implementation Plans in Oklahoma'. A sub-heading states: 'This site contains information about air quality regulations called State Implementation Plans (SIPs), Federal Implementation Plans (FIPs), and Tribal Implementation Plans (TIPs) approved by EPA within Oklahoma. To find the status of SIP submittals, visit [SIP status reports](#).' The page is divided into two columns. The left column is titled 'Approved SIPs' and lists four bullet points: 'EPA Approved Regulations in the Oklahoma SIP', 'EPA Approved Source-Specific Requirements', 'EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures', and 'About SIPs'. The right column is titled 'Approved TIPs' and lists two bullet points: 'EPA has not issued any TIPs in Oklahoma' and 'About TIPs'. At the bottom right of the screenshot is an image of a magnifying glass over a document labeled 'Oklahoma SIP'.

**Backlog** – A State Implementation Plan (SIP) is considered to be in backlog if it has been with EPA > 18 months.

EPA has committed to eliminating the backlog.

During the review of our backlogged SIPs, our SIPs have received active review.

Our **collaboration** with EPA has been productive and fruitful. They have worked with us every step of the way and we expect this will expedite approval of our updated SIP.

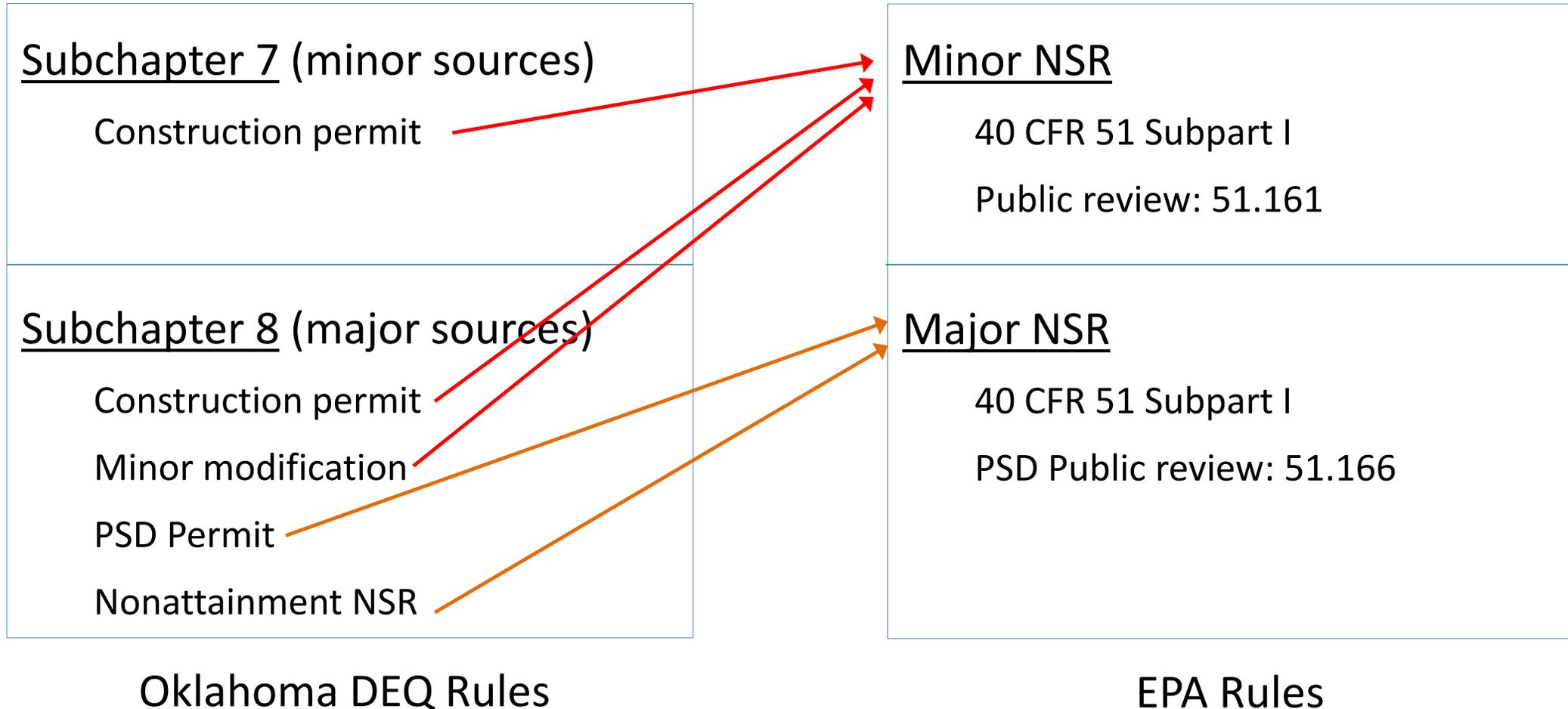
## Summary of Issues We Need to Address

Our Prevention of Significant Deterioration (PSD) construction permitting program has been approved and incorporated into our SIP.

Remaining issues to be addressed:

- Public review of the initial Title V permit
- Minor New Source Review (NSR)
- Subchapter 7 minor source operating permits
- Definitions added to Subchapter 1

## Oklahoma DEQ vs EPA View of NSR



## Minor NSR Permits Require Public Review

What will **change** and what will remain the **same**?



Major source (Subchapter 8) construction permits



Minor modifications to Title V operating permits



Subchapter 7 individual facility construction permits



General Permits (GPs) and Permits by Rule (PBRs)



Authorizations to construct and operate under GPs and PBRs

Title V minor mods and individual minor source construction permits will undergo **public review!**

## New Requirements for Public Review

These changes will require that a number of permits previously exempt from public review will now receive public review.

An initial Title V operating permit will follow the Tier II process.

The permit that is issued to move a facility from a Title V permit to a synthetic minor permit will also be Tier II.

*Other* permitting actions newly required to undergo public review will do so through a web-based process authorized by EPA.

These new requirements will constitute a modification of our Tier I public review system.

## Federally Enforceable State Operating Permits

An addition to our definitions: **FESOP**

This term describes the minor source operating permits we issue in Subchapter 7. Components of this program are already in the SIP. However, we need formal adoption.

The initial FESOP will require 30-day public review.

Modifications to FESOPs will proceed two different ways: enhanced NSR or traditional NSR. (The difference between enhanced and traditional NSR will be discussed below).

## Enhanced NSR or Traditional NSR

When facilities submit applications for construction permits, they will be asked to choose which public review process they choose to follow:

**Enhanced NSR** – The public review and EPA review will occur only during the issuance of the construction permit. The operating permit will be modified using the administrative amendment process for Title V permits or minor modifications will be issued without public or EPA review for Subchapter 7 operating permits (FESOPS).

**Traditional NSR** – The 30-day public review period will occur before the construction permit is issued. EPA will have an opportunity to comment as well, during this period. When it is time to issue the operating permit, there will be another 30-day public review period and, for Title V operating permits, a 45-day EPA review period.

## Subchapter 8 – Traditional and Enhanced NSR

| Public Review of NSR Permit | Process  |
|-----------------------------|--|
| Traditional NSR             | <p>The construction permit undergoes 30-day public and EPA review. (All NSR permits including minor modifications.)</p> <p>The Title V permit modification undergoes 30-day public and 45-day EPA review.</p> <p>For <b>minor modifications only</b>: the Title V permit modification goes through 45-day EPA review. (No public review required.)</p> |
| Enhanced NSR                | <p>The construction permit undergoes 30-day public and 45-day EPA review.</p> <p>The Title V permit is modified with an <b>administrative amendment</b> (no additional public or EPA review).</p>  |

## Subchapter 7 – Traditional and Enhanced NSR

| Public Review of NSR Permit | Process  |
|-----------------------------|--|
| Traditional NSR             | <p>The construction permit undergoes 30-day public and EPA review.</p> <p>The operating permit modification undergoes 30-day public EPA review.</p>  |
| FESOP Enhanced NSR          | <p>The construction permit undergoes 30-day public and 30-day EPA review.</p> <p>The operating permit is amended through a modified operating permit (no additional public or EPA review).</p> |

# Outline and Summary of Proposed Rule Changes

## Chapter 4

- Limit enhanced NSR to facilities that already have Title V operating permits
- To satisfy EPA's rules, our "consistent noticing method" is on the web. Newspaper publication is required for some permitting actions by Oklahoma statute.
- Facilities with Subchapter 7 operating permits may use FESOP enhanced NSR.
- FESOPs will be noticed on the web.
- Other notices may be published on the web at the Director's discretion.
- The initial Title V operating permit must undergo Tier II public review.
- To move from a Title V operating permit to a synthetic minor operating permit, a facility must undergo Tier II public review.

# Outline and Summary of Proposed Rule Changes

## Chapter 100, Subchapter 1

- Add definitions of “New Source Review (NSR)” and “NSR permit.”
- Add “NSR” to the list of acronyms.

# Outline and Summary of Proposed Rule Changes

## Subchapter 7

- Add definitions of “Federally Enforceable State Operating Permit (FESOP)” and “FESOP Enhanced NSR.”
- Construction (NSR) permits do not, technically, expire. The authorization to construct expires.
- Remove problematic “null and void” language.
- Application for an initial or a modification to an existing FESOP required within 180 days of startup.
- Facilities with FESOPs may use the FESOP enhanced NSR process for future facility modifications.

## Outline and Summary of Proposed Rule Changes

### Subchapter 8

- Formal definition of “enhanced NSR” for major source facilities.
- Addition of “traditional NSR.”
- Add “or change in the method of operation” to yield “physical change or change in the method of operation” to bring Oklahoma’s definition in line with EPA.
- Minor modifications will require NSR permits when associated with a “physical change or change in the method of operation.”
- Facilities with existing Title V permits are eligible for enhanced NSR.
- Applicants will need to choose between traditional NSR and enhanced NSR.

## Outline and Summary of Proposed Rule Changes

### Subchapter 8 (Continued)

- Enhanced NSR allows the Title V operating permit to be modified with an administrative amendment.
- The process DEQ follows for EPA review will be clarified for traditional and enhanced NSR.
- The petition process only applies to the Title V operating permit.
- DEQ may issue an NSR permit under the traditional NSR process over an EPA objection to an enhanced NSR permit at the Director's discretion. The objection would still need to be addressed when the Title V operating permit is issued.

## Our Path Forward

The proposed rules we have shared with the Council and our stakeholders remain a work in progress. Please note that today's special meeting is for information sharing and for requesting feedback. The Council will not be acting on our proposed rule changes today.

We are requesting comments and feedback so that we may bring a proposal to the Council during the **October meeting** to request approval at that time.

With that, we would like to turn to the specific rule language. Please note that we will likely make small changes to these rules and that updated drafts will be made available in advance of the October meeting.

## Chapter 4 Changes

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 4. RULES OF PRACTICE AND PROCEDURE  
SUBCHAPTER 7. ENVIRONMENTAL PERMIT PROCESS  
PART 1. THE PROCESS**

Please turn in your packets to the proposed amendments to rule text in Chapter 4, Subchapter 7.

This document is available on the web:

[Chapter 4: Rules of Practice and Procedure](#) (Amended Sections)

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 4. RULES OF PRACTICE AND PROCEDURE

SUBCHAPTER 7. ENVIRONMENTAL PERMIT PROCESS

PART 1. THE PROCESS

252:4-7-13. Notices

(g) **Additional notice content requirements for Clean Air Act Permits.** In addition to the notice provisions of 27A O.S. §§ 2-14-301, ~~and 2-14-302, and 2-14-304(C).~~ and other provisions of this section, the following requirements apply.

(1) Applicants shall give notice by publication in a newspaper of general circulation in the area where the source is located; to persons on a mailing list developed by the DEQ, including those who request in writing to be on the list; and by other means if determined by the Executive Director to be necessary to assure adequate notice to the affected public.

(2) All published notice(s) for permit modification shall identify the emissions change involved in the modification.

(3) An applicant for a Part 70 permit that may affect the air quality of a neighboring state must give written notice to the environmental regulatory agency of that state. [27A O.S. § 2-5-112(E)]

(4) ~~An A modification of an existing Part 70 source operating permit may be issued to an applicant for a new Part 70 operating permit without further public review if the operating permit modification is based on a construction permit that meets the requirements of 252:4-7-32(b)(1)(B) 252:4-7-32(b)(2)(A) or (B).~~ and the public notice for the construction permit contains the following language.

(A) This permit is subject to EPA review, EPA objection, and petition to EPA, as provided by 252:100-8-8 and 40 CFR § 70.8.

(B) If the operating permit as modified has conditions which do not differ from the construction permit's operating conditions in any way considered significant under 252:100-8-7.2(b)(2), the operating permit modification will be issued without further public notice and comment; and,

(C) The public will not receive another opportunity to provide comments when the modified operating permit is issued.

Please note that, in this presentation, much of the rule language *not being changed* has been **omitted**. The complete text of each section is included in the rule text documents included in the packet and on the web.

These changes limit “enhanced NSR” to facilities that already have Title V permits.

**No change** from June presentation!

**No change** from  
June presentation!

(6) In addition to the applicant's obligation to publish notices under 27A O.S. Sections 301, 302, and 304, DEQ shall prepare and provide corresponding notices on the agency's web site for Tier II and III applications. Such notices shall, at a minimum, provide the same information as is provided in the corresponding published notices, which information may be posted in tabular form. For purposes of permits under OAC 252:100-8, Part 7 (PSD), these postings shall constitute the "consistent noticing method" referred to in 40 CFR Section 51.166(q)(2)(iii).  
(7) DEQ shall prepare and post on the agency's web site notices of a 30-day opportunity for public comment for draft construction permits and draft construction permit modifications for Tier I applications. Such notices shall, at a minimum, provide information consistent with the requirements of 40 CFR Section 51.161, and may be posted in tabular form with appropriate links to additional information sources. Posting of such notices for other authorizations as listed in OAC 252:4-7-32(c) shall be at the Director's discretion.

EPA requires us to pick one “consistent noticing method” and we are choosing the web for that. Our state statutes on public review also require publication in the newspaper for certain permitting actions. Those are in addition to the EPA requirement. Those will not change.

New requirements for Tier I public review will be noticed *exclusively* on the web.

## Chapter 4 Changes

(8) The public notice for a construction permit for modification of a permitted minor facility shall contain a statement to the following effect: The facility's subsequent operating permit modification will be issued without further public notice and comment, unless the operating permit conditions as modified significantly differ from the construction permit's operating conditions.

(9) DEQ shall prepare and post on the agency's web site notices of a 30-day opportunity for public comment for draft individual operating permits for Tier I applications. Such notices shall, at a minimum, provide information consistent with the requirements of OAC 252:4-7-13(c), and may be posted in tabular form with appropriate links to additional information sources. A modification of an existing minor facility operating permit may be issued without further public review if the operating permit modification is based on a construction permit that was made available for review and comment under 252:4-7-13(g)(7).

(10) Posting of such notices for other authorizations as listed in OAC 252:4-7-32(c) shall be at the Director's discretion. In addition, posting of such notices for other Tier I applications, including Tier I applications under OAC 252:4-7-32(a)(2)(C) or OAC 252:4-7-32(b)(2)(C) for extension of expiration date of a construction permit, shall be at the Director's discretion.

Paragraph (8) will allow minor facilities to use FESOP enhanced NSR to incorporate construction permit requirements into a minor source operating permit (FESOP).

Tier I draft operating permits (FESOPs) will be posted on the web for public review.

Other notices may be posted at the Director's discretion.

**New!**

## Chapter 4 Changes

### PART 3. AIR QUALITY DIVISION TIERS AND TIMELINES

#### 252:4-7-32. Air quality applications - Tier I

(b) **Part 70 source permits.** The following air quality authorizations for Part 70 sources require Tier I applications.

(1) **New permits.**

(A) ~~New construction permit for an existing Part 70 source for any change considered minor under 252:100-8-7.2(b)(1).~~

(B) ~~New operating permit that:~~

~~(i) is based on a construction permit that was processed under Tier II or III, and 252:100-8-8, and~~

~~(ii) has conditions which do not differ from the construction permit's operating conditions in any way considered significant under 252:100-8-7.2(b)(2).~~

The initial Title V permit will undergo Tier II public review.

**No change** from  
June presentation!

**252:4-7-33. Air quality applications - Tier II**

**(a) Minor facility permit actions.**

(1) Any minor facility seeking a permit for a modification that when completed would turn it into a Part 70 source is required to apply under subsection (b) of this section.

(2) Any Part 70 source seeking a permit that would limit its potential to emit such that when issued it would qualify as a minor facility requires a Tier II application.

**(b) Part 70 source permits.** The following air quality authorizations for Part 70 sources require Tier II applications.

**(1) New permits.**

(A) New construction permit for a new Part 70 source not classified under Tier III.

(B) New construction permit for an existing Part 70 source for any change considered significant under 252:100-8-7.2(b)(2) and which is not classified under Tier III.

(C) New operating permit for a Part 70 source ~~that did not have an underlying construction permit processed under Tier II or III, and 252:100-8-8.~~

(D) ~~[Reserved] New operating permit with one or more conditions that differ from the underlying Tier II or III construction permit's operating conditions in a way considered significant under 252:100-8-7.2(b)(2).~~

(E) New acid rain permit that is independent of a Part 70 permit application.

(F) New temporary source permit under 252:100-8-6.2.

A permit issued to move a facility from a Title V operating permit to a synthetic minor operating permit requires Tier II public review.

The initial Title V permit will undergo Tier II public review.

**No change** from  
June presentation!

## Chapter 100 Changes

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 100. AIR POLLUTION CONTROL**

Please turn in your packets to the proposed amendments to rule text in Chapter 100.

This document is available on the web:

[Chapter 100: Air Pollution Control](#) (Amended Sections)

New!

## Chapter 100, Subchapter 1 Changes

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 100. AIR POLLUTION CONTROL**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**252:100-1-3. Definitions**

"New source review" or "NSR" means a process of evaluation performed by the DEQ to determine the applicable requirements that must be incorporated into a construction permit issued by the DEQ as necessary to authorize construction, modification, or change in the method of operation of a new or existing stationary source. DEQ's NSR program, at a minimum, must meet the requirements of 40 CFR Part 51, Subpart I.

NSR and NSR permit are defined in Subchapter 1 to clarify changes to our construction permit requirements to allow us to better bring our program into alignment with EPA's Part 51 requirements.

"NSR permit" means a construction permit issued by the DEQ as necessary to authorize construction, modification, or change in the method of operation of a new or existing stationary source.

**252:100-1-4. Units, abbreviations, and acronyms**

(19) NSR - New Source Review

NSR is added to the list of acronyms.

## SUBCHAPTER 7. PERMITS FOR MINOR FACILITIES

### PART 1. GENERAL PROVISIONS

#### 252:100-7-1.1. Definitions

"Federally Enforceable State Operating Permit" or "FESOP" means an operating permit issued under Subchapter 7 of this Chapter, including operating permits issued under the provisions of 252:4-7-33(a)(2).

"FESOP Enhanced NSR process" means a process under which the evaluation of requirements applicable under NSR is integrated with a determination of procedural and compliance requirements under the DEQ's FESOP program. This process is only available for facilities already operating under a FESOP permit. Under a FESOP enhanced NSR process, the 30-day public and EPA review period of an NSR permit is integrated with the review of the FESOP permit and results in the issuance of a minor source construction permit whose applicable FESOP implications have also been reviewed. Later the requirements of the construction permit may be incorporated into a modified FESOP using the minor source operating permit modification process, without further public or EPA review, as authorized in OAC 252:4-7-13(g)(9) and OAC 252:100-7-18(f).

FESOP is formally defined in our rules. All Subchapter 7 operating permits are FESOPs.

The FESOP enhanced NSR process allows a construction permit for a facility with an existing Subchapter 7 operating permit (FESOP) to undergo public and EPA review with specific language indicating that this is the only opportunity for such review. The modification to the operating permit would incorporate the requirements from the construction permit, but would not require another round of either public or EPA review.

**New!**

New!

### PART 3. CONSTRUCTION PERMITS

#### 252:100-7-15. Construction permit

(f) **Cancellation of authority to construct or modify.** ~~A duly issued permit~~ The authority to construct or modify granted by a duly issued construction permit will terminate and become null and void (unless extended as provided below) if the construction is not commenced within 18 months of the permit issuance date, or if work is suspended for more than 18 months after it has commenced.

(g) **Extension of authorization to construct or modify.**

(1) Prior to the permit expiration date, a permittee may apply for extension of the permit by written request of the DEQ stating the reasons for the delay/suspension and providing justification for the extension. The DEQ may grant:

(A) one extension of 18 months or less or

(B) one extension of up to 36 months where the applicant is proposing to expand an already existing facility to accommodate the proposed new construction or the applicant has expended a significant amount of money (1% of total project cost as identified in the original application, not including land cost) in preparation for meeting the definition of "commence construction" at the proposed site.

(2) If construction has not commenced within three (3) years of the effective date of the original permit, the permittee must undertake and complete an appropriate available control technology review and an air quality analysis. This review must be approved by the DEQ before construction may commence.

(h) **Expiration of authorization to construct or modify.**

The authorization to construct or modify under the construction permit shall expire upon completion of the construction or modification, or as otherwise provided in (e), (f), or (g). However, the requirements established under (d) shall continue in effect until and unless the facility or affected unit ceases operations, was never constructed in the first place, or the requirement is superseded under a subsequently-issued construction permit or a FESOP permit that has undergone public review.

NSR permits do not technically expire. They are superseded by later permits. But the authority to construct will terminate.

The "null and void" language is problematic and will no longer be used.

Clarification of circumstances under which authorization to construct expires.

New!

#### PART 4. OPERATING PERMITS

##### 252:100-7-18. Operating permit

(a) **Permit required.** An operating permit is required for a minor facility as specified in OAC 252:100-7-18(a)(1) and (2).

(1) **New facility.** No person shall cause or authorize the operation of a new minor facility for more than a 180-day period after commencement of operation without applying for a DEQ-issued air quality operating permit.

(2) **Modification of an existing facility.** No person shall cause or authorize the operation of a minor facility modified pursuant to OAC 252:100-7-15(a)(2) for more than a 180-day period after commencement of operation without applying for a DEQ-issued air quality operating permit or for modification of the facility's existing operating permit. ←

##### (f) **Operating permit conditions.**

(1) Emission limitations established and made a part of the construction permit are incorporated into and become enforceable limitations of the subsequently issued operating permit.

(2) Permit limitations in adjustment of, or in addition to, the facility's construction permit limitations may be made a condition of the facility's operating permit issuance.

(3) For a minor facility modified under a construction permit issued pursuant to OAC 252:100-7-15(a)(2), the operating permit may be modified using the FESOP enhanced NSR process public notice procedures of OAC 252:4-7-13(g)(7)-(9) to incorporate the operating permit conditions described in paragraphs (1) and (2). ←

Clarification that the facility must submit an application for an operating permit or a **modified operating permit** within 180 of startup of any emission unit whose construction was authorized by a construction permit.

Minor source facilities may use the FESOP enhanced NSR process so an additional round of public review is not required for the operating permit.

SUBCHAPTER 8. PERMITS FOR PART 70 SOURCES AND MAJOR NEW SOURCE REVIEW (NSR) SOURCES

New!

PART 5. PERMITS FOR PART 70 SOURCES

252:100-8-2. Definitions

"Enhanced NSR process" means a process under which the evaluation of requirements applicable under NSR is integrated with a full determination of procedural and compliance requirements under the Part 70 source (Title V) operating permit program. This process is an alternative to traditional NSR process, and is only available for facilities already operating under a Title V permit. Under the enhanced NSR process, the 30-day public review period for a draft NSR permit is integrated with the 45-day EPA review of the Title V permit and would allow for the issuance of a major source construction permit whose applicable Title V implications have also been reviewed. Therefore, the applicable requirements of the construction permit may later be incorporated as a modification to the Title V operating permit using the administrative amendment process of OAC 252:100-8-7.2(a) – without further public or EPA review, as authorized in OAC 252:4-7-13(g)(4).

"Traditional NSR process" means a process under which the evaluation of requirements applicable under NSR is performed independently of the determination of procedural and compliance requirements under the Part 70 source (Title V) operating permit program. This process is required for facilities that have not yet received a Part 70 source operating permit, but it may also be used (as an alternative to the enhanced NSR process) for facilities that have already received a Part 70 source operating permit. Under the traditional NSR process, the EPA has an opportunity to review a draft construction permit during the 30-day public review period. This process is independent of the subsequent application, review, and issuance process for the source's initial or modified Part 70 source operating permit that includes a 30-day public review period and a separate 45-day EPA review period, as described in OAC 252:100-8-8 and OAC 252:4-7.

This is the definition of the enhanced NSR process for major source facilities. The enhanced NSR process is, in effect, how the Oklahoma DEQ's air permitting program has operated (by default) for years. This change formally brings the process into alignment with EPA rules.

The traditional NSR process eliminates the need for the extra 45-day EPA review of an NSR permit. However, the 30-day public and 45-day EPA review would be required when the Title V operating permit modification is issued.

**Not new.** These changes were presented at the June AQAC meeting.

→ **252:100-8-4. Requirements for construction and operating permits**

(a) **Construction permits.**

(1) **Construction permit required.** No person shall begin actual construction or installation of any new source that will require a Part 70 operating permit without first obtaining a DEQ-issued air quality construction permit under Part 5 of OAC 252:100-8. A construction permit is also required prior to reconstruction of a major affected source under 40 CFR Part 63, reconstruction of a major source if it would then become a major affected source under 40 CFR 63, or for any physical change or change in method of operation that would be a minor modification under OAC 252:100-8-7.2(b)(1) or a significant modification under OAC 252:100-8-7.2(b)(2). In addition to the requirements of this Part, sources subject to Part 7 or Part 9 of this Subchapter must also meet the applicable requirements contained therein.

“Physical change **or change in the method of operation**” aligns with EPA usage.

← Minor modifications will now require construction permits, because they are considered to be minor NSR under EPA’s Part 51 rules.

**New!**

↓ (c) Enhanced NSR process. An existing Part 70 source covered by an operating permit issued under this subchapter may be eligible to utilize the enhanced NSR process, including the public notice procedures of OAC 252:4-7-13(g)(4) for a construction permit for modification of the source.

← Facilities with existing Title V permits are eligible for the enhanced NSR process. (Facilities that do not already have Title V operating permits are not eligible.)

## 252:100-8-5. Permit applications

New!

### (d) Construction permit applications.

(1) An application for a construction permit shall provide data and information required by this Chapter and/or requested on the application form available from the DEQ pursuant to the requirements of this Chapter. Such data and information shall include but not be limited to site information, process description, emission data and when required, BACT, modeling and sampling point data as follows:

(A) **BACT determination.** To be approved for a construction permit, a major source must demonstrate that the control technology to be applied is the best that is available for each pollutant that would cause the source to be defined as a major source. This determination will be made on a case-by-case basis taking into account energy, environmental, and economic impacts and other costs of alternative control systems. Unless required under Part 7 of this Subchapter, a BACT determination is not required for a modification that will result in an increase of emissions of less than 100 tons per year of any regulated air pollutant.

(B) **Modeling.** Any air quality modeling or ambient impact evaluation that is required shall be prepared in accordance with procedures acceptable to the DEQ and accomplished by the applicant.

(C) **Sampling points.** If required by the DEQ an application shall show how the new source will be equipped with sampling ports, instrumentation to monitor and record emission data and other sampling and/or testing equipment.

(2) Construction permit applications for new sources must also include the requirements for operating permits contained in OAC 252:100-8-5(e) to the extent they are applicable.

(3) Construction permit applications for existing source modifications that are eligible for the enhanced NSR process under 252:100-8-4(c) must indicate in the application whether they intend to utilize:

(A) the enhanced NSR process, including the public notice procedures of OAC 252:4-7-13(g)(4) and the administrative amendment process for the ensuing operating permit modification, or

(B) the traditional NSR process.

In the application for a construction permit, a facility will be required to specify whether they are requesting enhanced or traditional NSR processing. This will clarify the public and EPA review requirements.

**Not new.** These changes were presented at the June AQAC meeting.

**252:100-8-7.2. Administrative permit amendments and permit modifications**

**(a) Administrative permit amendments.**

**(1) An administrative permit amendment:**

- (A) Corrects typographical errors;
- (B) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;
- (C) Requires more frequent monitoring or reporting by the permittee;
- (D) Allows for a change in ownership or operational control of a source where no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the DEQ;
- (E) Incorporates into ~~the~~ an existing Part 70 source operating permit the requirements from preconstruction review permits issued by the DEQ under this Part and the enhanced NSR process public notice procedures of OAC 252:4-7-13(g)(4).

The enhanced NSR process allows the changes authorized by a construction permit to be incorporated into the Title V operating permit as an administrative amendment if the facility already has a Title V operating permit to be amended.

# New!

## 252:100-8-8. Permit review by EPA and affected states

### (f) **Timelines for submission of EPA draft or proposed permit review copy to EPA.**

(1) ~~The~~ For the categories specified in (A), (B), and (C), below, the DEQ shall review public comments, revise the draft permit as appropriate and submit the proposed permit to EPA for review no later than 60 days before the issuance deadline established in OAC 252:4-7-31, except as provided in OAC 252:4-7-9 through 4-7-11, which stop the review timeline and provide additional time for permit review.

(A) Operating permit applications for Part 70 sources that are not currently covered by a Part 70 source operating permit,

(B) Applications to modify existing Part 70 operating permits where the associated construction permit application underwent the traditional NSR process or where a construction permit was not required, and

(C) Construction permit applications eligible to utilize the enhanced NSR process public notice procedures of OAC 252:4-7-13(g)(4).

(g) **Notice of non-acceptance.** The DEQ shall notify the Administrator and any affected State in writing of any refusal by the DEQ to accept all recommendations for the proposed permit that the Administrator or the affected State submitted during the review period. The notice will include the DEQ's reasons for not accepting any such recommendation. The DEQ is not required to accept recommendations that are not based on applicable requirements of the Oklahoma Clean Air Act or 40 CFR Part 70, as applicable.

(h) **EPA Part 70 source operating permit review and non-objection.** Upon expiration of EPA's 45-day review period or receipt of notice from the EPA that it will not object to a proposed Part 70 source operating permit (or construction permit processed under the enhanced NSR process public notice procedures of OAC 252:4-7-13(g)(4)), the DEQ shall issue the proposed permit as final unless an administrative permit hearing has been timely and properly requested. [See Tier III procedures under 27A O.S. §2-14-304]

This language clarifies the process that the DEQ will follow for submitting draft or proposed permits to EPA for review. Under traditional NSR, EPA will review the draft permit along with the public. Under enhanced NSR, the public will have a 30-day public review period and then EPA will have a 45-day review period. For Title V operating permits that incorporate changes authorized by a traditional NSR permit, there will be both 30-day public and 45-day EPA review periods.

This language cleans up and clarifies the DEQ issuance policy.

# New!

## (i) **EPA Part 70 source operating permit review and objection.**

(1) **Timing.** No Part 70 source operating permit for which an application must be transmitted to the Administrator under subsection (a) of this Section shall be issued if the Administrator objects to its issuance in writing within 45 days of receipt of the proposed permit and all necessary supporting information.

(2) **Form of objection.** An EPA objection shall include a statement of the Administrator's reasons for objection and a description of the terms and conditions that the permit must include to respond to the objections.

(3) **Additional grounds.** Failure of the DEQ to do any of the following also shall constitute grounds for an objection:

(A) Comply with subsections (d) or (e) of this Section;

(B) Submit any information necessary to review adequately the proposed permit; or

(C) Process the permit application according to the uniform permitting requirements of OAC 252:4-7 Part 1.

(4) **Copy.** The Administrator will provide the permit applicant a copy of the objection.

(5) **DEQ response.** The DEQ shall consult with EPA and the applicant and shall amend the permit and submit for approval an amended proposed permit to EPA within 90 days after the date of EPA's objection. If the Administrator objects to issuance of a Part 70 source operating permit modification associated with a construction permit initially processed under the enhanced NSR process public notice procedures of OAC 252:4-7-13(g)(4), the Director may choose to notify the Administrator of DEQ's intent to complete the construction permit application review under the traditional NSR process while working to resolve EPA's objection.

(6) **Failure of DEQ to respond.** If the DEQ fails, within 90 days after the date of the EPA objection, to amend and resubmit the amended proposed permit in response to the objection, the Administrator will issue or deny the permit in accordance with the requirements of EPA's Part 71 regulations.

The EPA objection language is specific to a Title V operating permit. EPA may object to a permit issued under the enhanced NSR process, but only with regard to issues associated with the Title V operating permit that will be later amended.

If EPA objects to a permit undergoing enhanced NSR review, DEQ may, at our discretion, issue the NSR permit independently and later address the objection when issuing the Title V operating permit.

## New!

(j) **Public petitions to the Administrator.** If the Administrator does not object in writing to issuance of a Part 70 source operating permit under subsection ~~(h)~~ (i) of this Section, any person that meets the requirements of this subsection may petition the Administrator within 60 days after the expiration of the Administrator's 45-day review period to make such objection. Any such petition shall be based only on objections to the permit that the petitioner raised with reasonable specificity during the public comment period provided for in 27A O.S. § 2-14-302.A.2., unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period. If the Administrator objects to the permit as a result of a petition filed under this subsection, the DEQ shall not issue the Part 70 source operating permit until EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an EPA objection. If the DEQ has issued a permit prior to receipt of an EPA objection under this subsection, the Administrator will modify, terminate, or revoke such permit, and shall do so consistent with the procedures in 40 CFR §§ 70.7(g)(4) or (5)(i) and (ii) except in unusual circumstances. If the DEQ revokes the permit, it may thereafter issue only a revised permit that satisfies EPA's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

The petition process is only applicable to the issuance of the Title V operating permit. This language clarifies that distinction. (Other administrative remedies are available to entities choosing to contest the issuance of an NSR permit.)

## Chapter 100, Subchapter 8 Changes

That concludes my presentation on our proposed changes to Chapter 100, Subchapters 1, 7, and 8.

Thank you!

# Questions & Discussion by the Council

- Chapter 4 and Chapter 100
- Please be sure to unmute yourself.



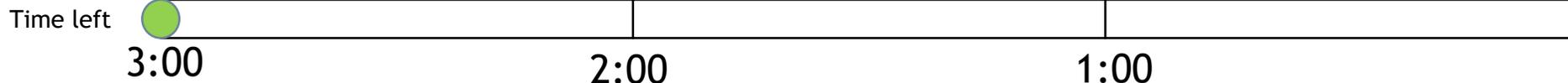
Muted



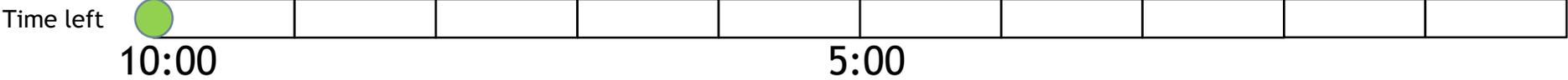
Unmuted

# Questions & Comments from the Public

- If you wish to make a comment, click the “Raise Hand” icon on your device at the bottom of the Participants list or use \*3 on your telephone keypad.
- If you do not have a microphone on your device, you will need to call 1-415-655-0002. Access Code: 1333031384
- The host will identify you by name or the first six digits of your phone number when it is your turn to speak and then unmute your line.
- You may also have to unmute yourself using the microphone symbol. A red symbol means you are muted.
- Please state your name and affiliation for the record.
- You will have approximately 3 minutes to make a comment.
- You may also email [AQDRuleComments@deq.ok.gov](mailto:AQDRuleComments@deq.ok.gov) if you wish to make a comment but do not wish to speak or are having technical difficulties.



# 10 Minute Break



# Further Discussion by the Council

4. **Division Director's Report** – Kendal Stegmann, Division Director
5. **New Business** - Any matter not known about or which could not have been reasonably foreseen prior to the time of posting the agenda.
6. **Adjournment** – The next regular meeting is scheduled for Wednesday, October 21, 2020, in Oklahoma City, Oklahoma.

# Thank you!

- That concludes the Special Meeting of the Air Quality Advisory Council.
- If you wish to follow-up with written comments pertaining to the rules proposed during this meeting, please email [AQDRuleComments@deq.ok.gov](mailto:AQDRuleComments@deq.ok.gov).